

**ASSEMBLY BILL**

**No. 2377**

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**Introduced by Assembly Member Hayashi**

February 21, 2008

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An act to amend Section 1043 of the Evidence Code, relating to custodial officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2377, as introduced, Hayashi. Custodial officers: personnel records.

Existing law provides for the confidentiality of peace or custodial officer personnel records, as specified. Existing law also provides discovery procedures for peace or custodial officer personnel records. Existing law, developed by the courts, requires a defendant requesting those personnel records to present an affidavit that sets forth a specific internally consistent factual scenario of officer misconduct that is plausible when read in light of the pertinent documents. Existing law, developed by the courts, also permits courts to make determinations regarding what is plausible based on a reasonable and realistic assessment of the facts and allegations.

This bill would require a defendant seeking personnel records to present an internally consistent factual scenario of the claimed officer misconduct that is substantially credible when read in light of the pertinent documents. This bill would further provide that an affidavit that contains a bare allegation of misconduct, or that simply denies the elements of the charged offense, or that merely denies the veracity of the police report, is insufficient. This bill would require courts to determine whether good cause for the discovery or disclosure sought

has been demonstrated based on a reasonable and realistic assessment of the facts and allegations.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1043 of the Evidence Code is amended  
2 to read:

3 1043. (a) In any case in which discovery or disclosure is sought  
4 of peace or custodial officer personnel records or records  
5 maintained pursuant to Section 832.5 of the Penal Code or  
6 information from those records, the party seeking the discovery  
7 or disclosure shall file a written motion with the appropriate court  
8 or administrative body upon written notice to the governmental  
9 agency which has custody and control of the records. The written  
10 notice shall be given at the times prescribed by subdivision (b) of  
11 Section 1005 of the Code of Civil Procedure. Upon receipt of the  
12 notice the governmental agency served shall immediately notify  
13 the individual whose records are sought.

14 (b) The motion shall include all of the following:

15 (1) Identification of the proceeding in which discovery or  
16 disclosure is sought, the party seeking discovery or disclosure, the  
17 peace or custodial officer whose records are sought, the  
18 governmental agency which has custody and control of the records,  
19 and the time and place at which the motion for discovery or  
20 disclosure shall be heard.

21 (2) A description of the type of records or information sought.

22 (3) Affidavits showing good cause for the discovery or  
23 disclosure sought, setting forth the materiality thereof to the subject  
24 matter involved in the pending litigation and stating upon  
25 reasonable belief that the governmental agency identified has the  
26 records or information from the records. *The affidavit shall also*  
27 *include an internally consistent factual scenario of the claimed*  
28 *officer misconduct that is substantially credible when read in light*  
29 *of the pertinent documents. An affidavit that provides a bare*  
30 *allegation of misconduct, or that simply denies the elements of the*  
31 *charged offense, or that merely denies the veracity of the police*  
32 *report, is insufficient.*

1     (c) *The court shall determine whether good cause has been*  
2     *demonstrated based on a reasonable and realistic assessment of*  
3     *the facts and allegations.*

4     ~~(e)~~

5     (d) No hearing upon a motion for discovery or disclosure shall  
6     be held without full compliance with the notice provisions of this  
7     section except upon a showing by the moving party of good cause  
8     for noncompliance, or upon a waiver of the hearing by the  
9     governmental agency identified as having the records.